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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re C.W., a Person Coming Under the
Juvenile Court Law.

B224164
(Los Angeles County
Super. Ct. No. NJ24278)

THE PEOPLE,

Plaintiff and Respondent,

v.

C.W.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, John C.
Lawson, II, Judge. Affirmed.

James M. Crawford, under appointment by the Court of Appeal, for Defendant
and Appellant.

No appearance for Plaintiff and Respondent.

C.W. appeals from the order of wardship (Welf. & Inst. Code, § 602) entered by reason of his having committed the misdemeanor of entering a dwelling house without the consent of the owner (Pen. Code, § 602.5). The juvenile court granted C.W. probation, one of the conditions of which is to pay the victim \$10,000 in restitution. We affirm the order of wardship.

FACTUAL AND PROCEDURAL BACKGROUND

*1. Facts.*¹

Walter Vukceovich lived at a house located at 250 Roycroft Avenue in Long Beach. In mid-September of 2008, Vukceovich locked and secured his house, then went out of town for six weeks. When he returned on November 2, 2008, Vukceovich found that every room in the house had been ransacked, including his wine cellar. In addition, many items of great value had been taken. Over \$100,000 worth of wine, Waterford crystal, coins, jewelry, art work, Lamoge porcelain and other fine china, as well as other items such as uncirculated silver dollars, were missing. Vukceovich called the police.

The investigating officers determined that the “mode of entry” had been a sliding glass door which led into the kitchen. The individuals who had entered the house had broken a lower glass panel, reached inside and removed the rod securing the door, then slid the door open. From the numerous beer cans and glasses containing alcoholic beverages strewn about, it appeared that the house had initially been used as a “place to loiter and hang out.” It was later that items had been taken.

When police officers reported to the house they found C.W. and a companion skateboarding in the empty pool in the back of Vukceovich’s house. When questioned by an officer, C.W. stated that he had heard the house was vacant and that “a lot of kids went there to skateboard in the empty pool.” C.W. indicated that he had been at the house on three occasions. The first time was after school on October 30, 2008. He had gone with a friend and the two boys had entered the house through the broken sliding glass door.

¹ The facts have been taken from the probation report.

C.W. had again gone to the house, but he could not remember on what date. C.W. had returned to the house for the third time, accompanied by some friends, on November 2, 2008.

Once inside the house C.W. had opened the refrigerator in the kitchen, then walked through the house, touching a number of items. He claimed, however, that he had not taken anything. Although C.W. had heard that a Halloween party had been held at the house, he had not attended the gathering.

2. Procedural history.

On January 2, 2009, a petition was filed pursuant to Welfare and Institutions Code section 602, alleging that “[o]n or between 9/22/2008 and 11/02/2008,” C.W. committed the felony of first degree residential burglary in violation of Penal Code section 459. It was alleged that C.W. entered an “inhabited dwelling house . . . occupied by Walter Vukceвич, with the intent to commit larceny and any felony.” It was further alleged that the offense “is a violation of Penal Code [s]ection 462[,] [subdivision] (a)” which provides in relevant part that “[e]xcept in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any person who is convicted of a burglary of an inhabited dwelling house”

A hearing was held on the matter on April 21, 2009. C.W., along with six other minors, appeared with counsel and his mother. After it was determined that all of the minors were present with counsel, the prosecutor stated: “I think we have a resolution, Your Honor. As to . . . six of the minors, we are going to be adding a residential trespass, [Penal Code section] 602.5, as a misdemeanor. It’s going to be a different count as to two different minors because some of the minors have two counts, some of them only have one count, so we have to go through it individually.” The prosecutor then indicated that, as to C.W., the charge would be “a count 2.”

The juvenile court indicated that it was his understanding that a disposition had been reached with regard to six of the seven minors. The prosecutor then indicated that as to the six, including C.W., they were “going to be admitting a [Penal Code section] 602.5, a residential trespass; home on probation [was] the agreed-upon disposition;” and

the matter was then going to be set for a restitution hearing during which evidence would be taken on the extent of restitution each minor should be required to pay.

After the juvenile court amended C.W.'s petition to allege, in addition to a count of burglary in violation of Penal Code section 459, a count pursuant to Penal Code section 602.5, the misdemeanor of residential trespass, the prosecutor explained to each of the minors, including C.W., his right to a trial, his right to confront and cross-examine the witnesses against him, his right to present a defense and his privilege against self-incrimination. Each of the juveniles, including C.W., then indicated that he understood and waived those rights. The prosecutor indicated that C.W.'s "maximum confinement time" was six months and that the "possible dispositions[] in this case [were] probation, camp, or suitable placement." The agreed-upon disposition for C.W. was "home on probation." The prosecutor continued, "But if you violate probation, then you could go to camp or you could be suitably placed." "[In addition,] [y]ou . . . are going to have to pay a fee." The prosecutor indicated that each of the minors was going to have to pay a \$50 fine to the state restitution fund. However, the prosecutor stated that "[t]he more significant restitution in this case is restitution to the victim who had a substantial loss in this case. We will have a restitution hearing, but you are . . . responsible for [the] restitution to the victim for the loss in this case."

C.W. indicated he understood that he would be granted probation, a term of which would be to pay restitution to the victim, then admitted having committed a violation of Penal Code section 602.5, "residential trespass." The juvenile court found true the allegation that C.W. had violated Penal Code section 602.5, as alleged in count 2 of the petition, and declared him a ward of the court pursuant to Welfare and Institutions Code section 602. All remaining allegations were dismissed and "[c]are, custody, control, and maintenance of [C.W. was] . . . placed under the supervision of the Probation Department." Each minor, including C.W., was placed at home on probation under various terms and conditions.

At a hearing held on March 2, 2010, the juvenile court indicated that, with regard to imposition of restitution, it had reviewed the courts' decisions in *People v. Leon* (2004)

124 Cal.App.4th 620 and *In re S. S.* (1995) 37 Cal.App.4th 543.² The court had also reviewed Welfare and Institutions Code section 730.6, subdivisions (h) and (i)³ and Penal

² In *People v. Leon*, *supra*, 124 Cal.App.4th at page 622, the court determined that Penal Code section 1202.4, subdivision (f) requires restitution in every case in which a victim has suffered economic loss. However, if a portion of that loss was clearly the result of a codefendant's actions and nothing in the record suggests that the defendant aided and abetted the codefendant, the defendant cannot be held liable for that portion of the loss attributable to the codefendant's conduct.

In *In re S. S.*, *supra*, 37 Cal.App.4th 543, a juvenile was adjudged a ward of the court after it was determined he, with another juvenile, had stolen an automobile. The juvenile court ordered the defendant to make full restitution to the victim. The court declared that his obligation was "joint and several" with that of the minor with whom he had committed the crime. The appellate court affirmed the trial court's ruling, stating that "[t]here was no evidence that either juvenile was more responsible than the other for the loss of the vehicle's contents. The record amply supports the [juvenile] court's determination that [the defendant] should be responsible for the entire amount." (*Id.* at p. 550.)

³ Welfare and Institutions Code section 730.6 provides in relevant part: "(a)(1) It is the intent of the Legislature that a victim of conduct for which a minor is found to be a person described in Section 602 who incurs any economic loss as a result of the minor's conduct shall receive restitution directly from that minor. [¶] (2) Upon a minor being found to be a person described in Section 602, the court shall consider levying a fine in accordance with Section 730.5. In addition, the court shall order the minor to pay, in addition to any other penalty provided or imposed under the law, both of the following: [¶] (A) A restitution fine in accordance with subdivision (b). [¶] (B) Restitution to the victim or victims, if any, in accordance with subdivision (h)."

Subdivision (h) of section 730.6 provides in relevant part: "Restitution ordered pursuant to subparagraph (B) of paragraph (2) of subdivision (a) shall be imposed in the amount of the losses, as determined. If the amount of [the] loss cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court at any time during the term of the commitment or probation. The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states them on the record. A minor's inability to pay shall not be considered a compelling or extraordinary reason not to impose a restitution order, nor shall inability to pay be a consideration in determining the amount of the restitution order. A restitution order pursuant to subparagraph (B) of paragraph (2) of subdivision (a), to the extent possible, shall identify each victim, unless the court for good cause finds that the order should not identify a victim or victims, and the amount of each victim's loss to which it pertains, and shall be of a dollar amount sufficient to fully

Code section 1202.4, subdivision (f)⁴ “in determining the parameters for the court in terms of restitution.” The juvenile court continued, “The court has had an opportunity to review the testimony that was heard at the restitution hearing, reviewed the arguments made by counsel, and it was also stipulated that the court [w]ould review some of the police reports, limited police reports in terms of statements. The court did review that, as well. [¶] One of the issues that the court sees in fashioning restitution is clearly for rehabilitation of all minors. The court cannot help but think that there was a certain amount of awareness, or there should have been a certain amount of awareness by the minors in going to a house in this neighborhood and seeing a house full of property and not thinking that maybe someone lived there or that they should not be at [the] location. The court is concerned as to these minors awareness in knowing that they should not be

reimburse the victim or victims for all determined economic losses incurred as the result of the minor’s conduct for which the minor was found to be a person described in Section 602, including all of the following: [¶] (1) Full or partial payment for the value of stolen or damaged property. The value of stolen or damaged property shall be the replacement cost of like property [¶] (i) A restitution order imposed pursuant to subparagraph (B) of paragraph (2) of subdivision (a) shall identify the losses to which it pertains, and shall be enforceable as a civil judgment pursuant to subdivision (r). The making of a restitution order pursuant to this subdivision shall not affect the right of a victim to recovery from the Restitution Fund in the manner provided elsewhere, except to the extent that restitution is actually collected pursuant to the order. Restitution collected pursuant to this subdivision shall be credited to any other judgments for the same losses obtained against the minor or the minor’s parent or guardian arising out of the offense for which the minor was found to be a person described in Section 602. Restitution imposed shall be ordered to be made to the Restitution Fund to the extent that the victim . . . has received assistance from the Victims of Crime Program”

⁴ Penal Code section 1202.4 provides in relevant part: “(a)(1) It is the intent of the Legislature that a victim of crime who incurs any economic loss as a result of the commission of a crime shall receive restitution directly from any defendant convicted of that crime. [¶] . . . [¶] (f) . . . [I]n every case in which a victim has suffered economic loss as a result of the defendant’s conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court. . . . The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states them on the record.”

on these premises. [¶] . . . [¶] The court in fashioning this restitution is not going to order jointly and severally. The court is going to make an order specifically as to each minor, the reason being that it is an extremely large amount of restitution. The court does believe that there is a certain amount of responsibility on both a trespass, as well as a burglary. The fact that all the minors admitted hearing by word of mouth . . . of the situation that existed, the court has difficulty in determining based on the testimony in the case whether the court can assess jointly and severally and I believe it would be unknown who all may have been involved in taking items out of this home. [¶] However, the court has these seven gentlemen[, including C.W.,] in front of it and the [victim] indeed testified fairly specifically as to his loss.” Based on the victim’s testimony and the police reports, the juvenile court ordered six of the seven juveniles, including C.W., to pay to the victim restitution in the amount of \$10,000. The seventh juvenile, who pled guilty to burglary, was ordered to pay restitution in the amount of \$30,000.

The juvenile court then reviewed each of the juveniles’ progress, including that of C.W. The court commented: “[C.W.], the court has received a report indicating the community service has been done, [and you are] working hard in school. Let’s get the [failing] Algebra grade up.” The court then set the matter for a “non-appearance progress report [on] August 31st, 2010.”

In an “Order for Restitution and Abstract of Judgment” filed on March 2, 2010, it was indicated that C.W. was to remain at home on probation as a ward of the court pursuant to Welfare and Institutions Code section 602. In addition, C.W. was ordered to pay to the victim, Walter Vukceovich, restitution in the amount of \$10,000 for “property stolen or damaged.”

C.W. filed a notice of appeal from the trial court’s order on April 30, 2010.

This court appointed counsel to represent C.W. on appeal on June 30, 2010.

CONTENTIONS

After examination of the record, counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record. By notice filed September 2, 2010, this court advised C.W. to submit within 30 days any

contentions, grounds of appeal or arguments he wished this court to consider. No response has been received to date.

REVIEW ON APPEAL

We have examined the entire record and are satisfied C.W.'s counsel has complied fully with counsel's responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

DISPOSITION

The order of wardship is affirmed.

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KLEIN, P. J.

We concur:

KITCHING, J.

ALDRICH, J.